IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

WRIT PETITION NO.931 OF 2005

The Secretary Seva Sadan Trust & Ors. ...Petitioners.
Vs.
Smt. Jayashree P. Mansharamani & Ors. ...Respondents.
....
Mr. A. G. Kothari for the Petitioners.
Mr. G. K. Masant for Respondent No.1.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

August 31, 2005.

P.C.:

Rule, by consent returnable forthwith. Counsel appearing on behalf of the First Respondent waives service. By consent of Counsel and at their request taken up for hearing.

2. Seva Sadan Trust is a public charitable Trust registered under the Bombay Public Trusts Act, 1950. The Trust has established and conducts the New Era English Primary School. The Trust is constituted by Sindhi speaking persons who are entitled to the protection of Article 30 of the Constitution of India. The Trust had appointed Smt. Vilasani Devrajani as Head Mistress of the School. The Head Mistress attained the age of

superannuation on 31st August 2004.

3. Sub-section (2) of Section 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, lays down that the provisions of the Act shall not apply to the recruitment of the Head of a minority School and any other persons not exceeding three who are employed in such school and whose names are notified by the Management to the Director or, as the case may be, the Deputy Director for this purpose. Rule 17 (2) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, provides thus:

> "(2) Where a teacher or Head has attained the age of superannuation in the middle of either of the two academic terms and the Management desires to grant him re-employment beyond the age of superannuation, such teacher or Head may be granted such re-employment till the end of the particular term only, subject to the condition that he is physically and mentally fit for continuance in service."

Consequently, when a teacher or the Head of the Institution attains

the age of superannuation during the course of an academic term, it is open to the management to re-employ such person until the end of the academic term subject to the employee being physically and mentally fit for being continued in service. This provision has been made in order to obviate the inconvenience that may be caused by the departure of a teacher or Head midstream.

4. In the present case, in anticipation of the retirement of the existing Head Mistress on 31st August 2004, the First Respondent filed an appeal before the School Tribunal on 7th July 2004 claiming the post of Head Mistress. After the Head Mistress retired on 31st August 2004, her services came to be extended by the Management until November 2004 in order to facilitate the completion of the process of appointment of a new Head Mistress. Thereafter, even after the expiry of the academic term in November 2004, the services of the Head Mistress were extended until 31st April 2005. The appeal by the First Respondent was heard and disposed of by the School Tribunal by its order dated 23rd December 2004. The Tribunal held that even as a minority institution, the Petitioners were not exempt from the requirement laid down by the Rules and the appointment of the existing Head

Mistress after the end of the academic term in which she had retired was unlawful. The School Tribunal accordingly, issued a direction to appoint the First Respondent as an incharge Head Mistress of the School from the date of the order. The management was directed not to interfere with the conduct of the School by the Head Mistress.

5. After the order of the School Tribunal, the management by an order dated 31st December 2004 appointed Mrs. Manmohan Sidhwa as Head Mistress with effect from 1st January 2005. Accordingly the First Respondent was informed that the management had appointed a Head Mistress without prejudice to its right to challenge the order of the School Tribunal. In the meantime, the First Respondent reported on duty on 24th December 2004 and filed on 30th December 2004 a Contempt Petition on the ground that the management had not allowed her to report. Simultaneously, on 10th February 2005, a criminal complaint was instituted before the Judicial Magistrate, First Class, at Ulhasnagar in which summons was issued to the office bearers and the Trustees of the Managing Committee of the Trust.

6. Counsel appearing on behalf of the Petitioners submitted that Section 3(2) of the Act postulates that the provisions of the Act shall not apply to the recruitment inter alia of the Head of a minority institution. It is urged that the extension of appointment of the incumbent who had retired midstream during the academic term was lawful even under the provisions of Rule 17(2). Hence it is submitted that even on the assumption that the provisions of Rule 17 would apply to the recruitment of the Head of a minority institution, the management was within its right in appointing the erstwhile Head Mistress until the completion of the academic term. Counsel has seriously assailed the order of the Tribunal in so far as it directs the appointment of the First Respondent as an incharge Head Mistress. The submission is that even if the Tribunal was justified in coming to the conclusion that the extension granted to the existing Head Mistress beyond the end of the academic term is unjustified, the School at the highest could be directed to make a fresh appointment in accordance with law.

7. On the other hand, on behalf of the First Respondent, the conduct of the management has been questioned. It has been urged that the management ignored the directions of the School

Tribunal, and declined to grant an appointment to the First Respondent as an incharge Head Mistress.

8. Section 3(2) of the Act specifically provides that the provisions of the Act shall not apply inter alia to the recruitment of the Head of a minority institution. There is no dispute about the factual position that the Trust which conducts New Era English Primary School is established and administered by Sindhi speaking persons who constitute a linguistic minority in the State of Maharashtra. That being the position, the provisions of the Act are not attracted to the recruitment of a Head of the institution. For the purposes of the present case, this Court may proceed on the basis that Rule 17 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 applies. The effect thereof is that the management was within its rights in extending the services of the Head Mistress who had superannuated until the academic term was over viz., until November 2004. There is merit in the submission that has been urged on behalf of the Petitioners that even if the extension that was granted beyond the end of the academic term to Mrs.Devrajani was contrary to Rule 17(2), the School Tribunal was not justified in directing the

Petitioners to appoint the First Respondent. At the highest, the only direction that could have been issued was to direct the Petitioners to fill up the post in accordance with law. From the communication dated 31st December 2004 issued by the Petitioners to the First Respondent it emerges that a Head Mistress came to be appointed with effect from 1st January 2005. The management was entitled to do so since the appointment that was made until that date was a stop gap arrangement until a regular appointment could be made to fill up the vacancy caused by the retirement of the earlier Headmistress. The management having made an appointment on 1st January 2005, no question survived of making a temporary arrangement.

9. For these reasons I am of the view that the entire approach of the School Tribunal is flawed. The order passed by the School Tribunal encroaches upon the constitutional right of a linguistic minority to establish and administer an educational institution. In these circumstances, the order has to be quashed and set aside. The petition is accordingly allowed and the order of the School Tribunal dated 23rd December 2004 is quashed and set aside. Consequent upon the setting aside of the impugned

order, all the subsequent proceedings, including the motion for contempt and criminal complaint do not survive and shall accordingly stand quashed. The petition is accordingly allowed in these terms. No order as to costs.

.....